IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9367 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI DEVRAM PANCHMATIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9367 of 2001

MR DM THAKKAR for Petitioner No. 1

MR SS PATEL AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

SERVED BY RPAD - (R) for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/12/2001

ORAL JUDGEMENT

1. Mr.Sudhanshu S. Patel, learned AGP tenders affidavit filed on behalf of the State, Ms.Davawala, learned Additional Central Government Standing Counsel for respondent NO.4 tenders affidavit on behalf of

Central Government. The same be taken on record.

2. By way of this petition, the petitioner has challenged the order of detention dtd.29/9/2001 passed by the District Magistrate, Jamnagar under the powers conferred to him under Sec.3(2) of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act (hereinafter referred to as "the Act").

3. The learned counsel for the petitioner has submitted that against the detention order, the detenu has made representation on 7/10/2001 and the order of detention has been confirmed by the authority on 8/10/2001. But thereafter also, the District Magistrate has rejected the representation of the petitioner vide order dtd.17/10/2001, though the District Magistrate has no authority to pass such order after confirmation of the detention order. The learned counsel for the petitioner tenders the copy of order of the District Magistrate, Jamnagar dtd.17.10.2001 rejecting the representation of the petitioner. The same be taken on record. The District Magistrate though has become functus offitio after confirmation of the detention order, the District Magistrate has passed order rejecting the representation of the petitioner. Hence on this ground alone, the impugned order is required to be quashed and set aside. On the other hand, the District Magistrate has not filed any affidavit controverting the say of the petitioner. Further, this point is squarely covered by the decision of Honourable Supreme Court in the case of SALIM POTHIYU REHMANBHAI BELIA VS. DISTRICT MAGISTRATE, DISTRICT MEHSANA AND ORS. reported in 1994 (2) GLR (UJ) 11, wherein the Honourable Court has held as under ;-

> "that the detaining authority is left with no power to consider and reject any representation received from the detenu against his detention even if it is addressed to the detaining authority and the detaining authority has to pass on the representation to the State Government for its consideration. In the present case, it is not in dispute that the petitioner's representation, made after the State Government had confirmed the detention, was not forwarded to the State Government for its consideration on its merits. Such inaction on the part of the District Magistrate, District Mehsana vitiated the continued detention of the petitioner."

4. Here in the present case, since the District Magistrate has not forwarded the representation of the petitioner to the State Government for its consideration,

the order of detention is null and void and is required to be quashed and set aside.

5. The petition is allowed. The impugned order of detention dated 29/9/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Rameshbhai Devrambhai Panchmatiya is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P. DHOLAKIA, J.)

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